

REMARKS

A. Background

Claims 1-12 were pending in the application at the time of the Office Action. Claims 8 and 9 were rejected as being indefinite. Claims 1-12 were rejected as being obvious over cited art. By this response Applicant has amended claims 2, 8, and 9 to address formal matters. In view of this, Applicant submits that the amendments to the claims do not introduce new matter and entry thereof is respectfully requested. Claims 1-12 are again presented for the Examiner's consideration in light of the following remarks.

B. Indefiniteness Rejection

Page 2 of the Office Action rejects claims 8 and 9 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action asserts that there is insufficient antecedent basis for various elements in claims 8 and 9. In view of amendments made herein to claims 8 and 9, Applicant respectfully submits that the rejection has been overcome and should be withdrawn.

C. Obviousness Rejections

Pages 3 and 4 of the Office Action reject claims 1 and 6 under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 4,249,463 to Hornby (“*Hornby*”) in view of U.S. Publication No. 2004/0184950 to McVey et al. (“*McVey*”).¹ Applicant respectfully traverses this rejection and asserts that one of skill in the art would not find it obvious to modify *Hornby* with the

¹ Although the rejection equates U.S. Patent No. 5,906,794 to Hornby, it appears from the Notices of References Cited that the Examiner meant U.S. Patent No. 4,249,463 to Hornby. If this is incorrect, please advise accordingly.

teachings of *McVey* in the allegedly obvious manner set forth in the Office Action because i) it would render *Hornby* unsatisfactory for its intended purpose and ii) even if combined, the cited references would not include all of the limitations recited in the rejected claims. Of the rejected claims, claim 1 is the sole independent claim.

The Office Action asserts that *Hornby* discloses the claimed limitations, but concedes that among other things, *Hornby* does not specifically disclose the “main chamber containing a first apparatus disposed within the chamber for generating and delivering a sterilant vapour from a supply held within the chamber to be distributed throughout the chamber to sterilise the surfaces,” as recited in independent claim 1. See Office Action at p. 3. The Office Action then points to *McVey* to remedy this deficiency of *Hornby*.

The *Hornby* reference relates to a microbiological safety cabinet or workstation with an air circulation system including a HEPA filter and an air evacuation system to enable potentially dangerous materials such as biological substances and radiopharmaceuticals to be handled within the cabinet at lower air pressures than ambient to create an inflow of ambient air into the cabinet and avoid outflow of air to atmosphere which could result in the release of harmful materials to the external atmosphere. See col. 1, lines 5-9 and 34-45. Applicant notes that there is no provision in *Hornby* for sterilizing the main chamber. The *Hornby* apparatus is simply an arrangement which enables dangerous materials to be worked on within the enclosure.

In contrast, the *McVey* reference relates to a decontamination system for an enclosure, such as a building, comprising duct work for transporting air to a plurality of regions of the building, means for circulating air through the duct work and means for supplying decontamination vapor to the duct work system to be circulated therethrough. Applicant notes that a building decontamination system, such as that disclosed by *McVey* is considerably

different than a safety cabinet used to handle biological and radiopharmaceuticals as disclosed by *Hornby*.

Hornby discloses that one of its main purposes is “to provide an improved workstation which is suitable for use in handling potentially dangerous material,” such as biological substances. Col. 1, lines 30-32; see also col. 1, lines 5-9. As is known in the art, the purpose of such a biological workstation is to carry out experiments and processes using the biological substances, not to indiscriminately destroy the substances. Consequently, adding a decontamination system to the safety cabinet does not make sense, as this would cause the biological agents to be destroyed, thus not allowing the users of the workstation to use and handle such agents. Thus, adding an “apparatus for generating and delivering a sterilant vapour,” as allegedly taught by *McVey* to the *Hornby* workstation would render *Hornby* unsatisfactory for its stated purpose. Accordingly, Applicant submits that it would not be obvious to combine *Hornby* and *McVey* as asserted in the Office Action.

Furthermore, Applicant submits that even if, *arguendo*, *Hornby* and *McVey* were combined in the allegedly obvious manner set forth in the Office Action, the resulting combination would not include every limitation recited in the rejected claims.

For example, as shown in Figures 1 and 2, the *Hornby* workstation includes a main chamber 11 with a filter 15 placed at the top of chamber 11. A screen 23 is located between the filter 15 and the main chamber 11. A first chamber is disposed upstream of the filter 15 (i.e., between filter 15 and a fan 16). During use, fan 16 causes air to flow into the first chamber and then through filter 15. Once the air has passed through filter 15, the flow of air is divided, part of the air flow going into the main chamber 11 through screen 23 and part of the air flow passing through an outlet and into a laterally extending duct 31 containing extraction fans. See col. 1,

lines 48-51. By removing part of the air through duct 31, the air pressure in the main chamber 11 is lowered to ensure that air flow can enter the chamber 11 but cannot escape from the chamber to the external atmosphere. See col. 1, lines 41-46.

Hornby discloses that the outlet is “provided down stream of the filter.” Col. 1, lines 41-43; see also col. 1, lines 46-47. This means that the outlet through which the air is drawn away from the *Hornby* apparatus cannot be located in the first chamber (i.e., between the filter 15 and the fan 16) because the first chamber is disposed upstream of the filter 15. Yet, because claim 1 includes the limitation: “a filter separating the plenum chamber from the main chamber,” it is only the first chamber of *Hornby* that can even arguably correspond to the claimed “plenum chamber,” as the aforementioned first chamber is the only chamber in *Hornby* separated from the main chamber 11 by a filter.

Thus, because the air flow is not drawn away from the *Hornby* apparatus until after it has passed through the filter and is thus not in the first chamber, Applicant submits that *Hornby* does not teach or suggest “a filter separating the plenum chamber from the main chamber, … and means for drawing gas from the enclosure via an outlet from the plenum chamber,” as recited in amended claim 1.

As noted above, *McVey* is cited merely for allegedly disclosing an apparatus having a “main chamber containing a first apparatus disposed within the chamber for generating and delivering a sterilant vapour from a supply held within the chamber to be distributed throughout the chamber to sterilise the surfaces.” Applicant submits that even if, *arguendo*, a sterilizing apparatus as disclosed by *McVey* were somehow added to the *Hornby* workstation, the resulting combination would still not cure the deficiencies of *Hornby*, discussed above. That is, the combination would not disclose “a filter separating the plenum chamber from the main chamber,

... and means for drawing gas from the enclosure via an outlet from the plenum chamber," as recited in amended claim 1.

Thus, because adding an "apparatus for generating and delivering a sterilant vapour," as allegedly taught by *McVey* to the *Hornby* workstation would render *Hornby* unsatisfactory for its intended purpose, and because the allegedly obvious combination would not include every limitation recited in the rejected claims, Applicant submits that the Office Action has failed to establish a *prima facie* case of obviousness regarding rejected claims 1 and 6. Accordingly, Applicant respectfully requests that the obviousness rejection with respect to claims 1 and 6 be withdrawn.

Pages 5-9 of the Office Action reject claims 2-5 and 7-12 under 35 USC § 103(a) as being unpatentable over the allegedly obvious combination of *Hornby* and *McVey* and further in view of various other references. Applicant respectfully disagrees.

Applicant notes that inasmuch as the rejections of claims 2-5 and 7-12 rely on the characterization of *Hornby* and *McVey* advanced by the Office Action in connection with the rejection of claims 1 and 6, the rejections of claims 2-5 and 7-12 are defective for at least the reasons set forth above. Furthermore, Applicant submits that none of the further cited art cures the deficiencies of *Hornby* and *McVey* as discussed above. As such, Applicant respectfully submits that the Office Action has failed to establish a *prima facie* case of obviousness with respect to claims 2-5 and 7-12, and the rejection of those claims should accordingly be withdrawn.

No other objections or rejections are set forth in the Office Action.

D. Conclusion

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, applicant submits that many if not all of the dependent claims are independently distinguishable over the cited art. Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, applicant respectfully requests the Examiner's reconsideration and allowance of claims 1-12 as amended and presented herein.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 24th day of April 2008.

Respectfully submitted,

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